

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	: CASE NO.: 18-59411-BEM
	: CHAPTER: 13
	:
JAMES DANIEL CUNNINGHAM	:
Debtor	:

FREEDOM MORTGAGE CORPORATION,	:
Movant,	:
	: CONTESTED MATTER
vs.	:
	:
JAMES DANIEL CUNNINGHAM	:
MARY IDA TOWNSON, Trustee	:
Respondents	:

AMENDED NOTICE OF ASSIGNMENT OF HEARING

NOTICE IS HEREBY GIVEN that Freedom Mortgage Corporation filed an Amended Motion to Validate Foreclosure Sale with the Court seeking an order granting the, amended motion to validate foreclosure sale, and hearing will be held on the Amended Motion to Validate Foreclosure Sale **in Courtroom 1402, United States Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia at 11:00 AM on August 15, 2018.**

Your rights may be affected by the court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how, and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is: Clerk, U.S. Bankruptcy Court, 75 Ted Turner Drive, S.W., Suite 1340, Atlanta, GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the Amended Motion to Validate Foreclosure Sale cannot be held within thirty (30) days, Movant waives the requirement holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

Dated: 7/10/18
/s/ Lisa F. Caplan
Lisa F. Caplan
GA State Bar No. 001304
Rubin Lublin, LLC
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Attorney for Creditor

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AMENDED MOTION TO VALIDATE FORECLOSURE SALE

Comes now Freedom Mortgage Corporation, its Successors and/or Assigns (hereinafter, “Movant”) and files this Amended Motion to Validate Foreclosure Sale with respect to certain real property having an address of 4313 EXECUTIVE DRIVE, STONE MOUNTAIN, GA 30083 (the “Property”). In support of this Amended Motion, Movant respectfully shows the Court as follows:

1. John W. Turner, by and through the Debtor, James Daniel Cunningham as Attorney-In-Fact, has executed and delivered or is otherwise obligated with respect to that certain promissory note in the original principal amount of \$78,500.00 (the “Note”). A copy of the Note is attached hereto as Exhibit A. Movant is an entity entitled to enforce the Note.

2. Pursuant to that certain Security Deed also executed by John W. Turner, by and through the Debtor, James Daniel Cunningham as Attorney-In-Fact (the “Security Deed”), all obligations (collectively, the “Obligations”) of John W. Turner under and with respect to the Note and the Security Deed are secured by the Property. A copy of the Security Deed is attached hereto as Exhibit B.

3. The property was subsequently transferred to Joshua Gerald Crowe on January 2,

2017 via a warranty deed recorded on January 3, 2017. Said warranty deed was executed by John W. Turner, by and through the Debtor, James Daniel Cunningham as Attorney-In-Fact. A copy of the warranty deed is attached hereto as Exhibit C.

4. Of note, Debtor provided counsel for Movant a copy of a Specific Power of Attorney that gives Debtor Power of Attorney for Joshua Gerald Crowe. A copy of the Specific Power of Attorney is attached hereto as Exhibit D.

5. Movant affirmatively alleges that at 11:34 AM on June 5, 2018, a foreclosure sale was conducted with respect to the Property. As a result of the sale, the Property was sold to a third party for the amount of \$113,000.00. Movant otherwise complied with all requirements in the Security Deed and under state law with respect to said foreclosure sale.

6. Movant further alleges that the instant bankruptcy case was filed on June 5, 2018, at 09:45 AM, based upon the filed stamped petition, by James Daniel Cunningham.

7. After a diligent search of the real property records prior to and upon conclusion of the foreclosure sale, Movant hereby asserts the Debtor has no rights in the Property that would have deemed the Property to be property of the estate under 11 U.S.C. §541 and thus, there was no automatic stay in effect as to the property under 11 U.S.C. §362 at the time the sale was conducted. Movant requests the Court review the record and make this finding so that Movant may record a Deed under Power and conclude the sale cried on June 5, 2018.

WHEREFORE, Movant prays:

(a) That this Court grant Movant's Amended Motion to Validate Foreclosure Sale;

(b) Allow Movant to conclude said sale and record its Deed Under Power; or

(c) For such other and further relief as the Court deems proper.

Respectfully submitted this 10th day of July, 2018

RUBIN LUBLIN, LLC

/s/ Lisa F. Caplan

Lisa F. Caplan

GA State Bar No. 001304

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3145 Avalon Ridge Place, Suite 100

Peachtree Corners, GA 30071

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Attorney for Creditor

CERTIFICATE OF SERVICE

I, Lisa F. Caplan certify that on the 10th day of July, 2018, I caused a copy of the Amended Notice of Assignment of Hearing and Amended Motion to Validate Foreclosure Sale to be filed in this proceeding by electronic means and to be served by depositing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon to the said parties as follows:

James Daniel Cunningham
4313 Executive Dr
Stone Mountain, GA 30083

Mary Ida Townson
Chapter 13 Trustee
191 Peachtree Street, NE
Suite 2200
Atlanta, GA 30303

Executed on 7/10/18
/s/ Lisa F. Caplan
Lisa F. Caplan
GA State Bar No. 001304
Rubin Lublin, LLC
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Peachtree Corners, GA 30071
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Attorney for Creditor